



SHIRE
of
DANDARAGAN

MINUTES

of the

SPECIAL COUNCIL MEETING

held at the

COUNCIL CHAMBERS, JURIE BAY

on

WEDNESDAY 4 OCTOBER 2023

COMMENCING AT 1PM

THESE MINUTES ARE YET TO BE CONFIRMED

(THIS DOCUMENT IS AVAILABLE IN LARGER PRINT ON REQUEST)

MINUTES FOR SPECIAL COUNCIL MEETING HELD WEDNESDAY 4 OCTOBER 2023
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1 DECLARATION OF OPENING / ANNOUNCEMENT OF VISITORS

1.1 DECLARATION OF OPENING

The presiding member declared the meeting open at 1:00pm and welcomed those present.

1.2 DISCLAIMER READING

The disclaimer was read aloud as there were approximately 50 members of the public present.

“No responsibility whatsoever is implied or accepted by the Shire of Dandaragan for any act, omission or statement or intimation occurring during this meeting.

It is strongly advised that persons do not act on what is heard at this meeting and should only rely on written confirmation of Council’s decision, which will be provided within fourteen (14) days of this meeting.”

2 RECORD OF ATTENDANCE / APOLOGIES / APPROVED LEAVE OF ABSENCE

Members

Councillor L Holmes	(President)
Councillor P Scharf	(Deputy President)
Councillor R Glasfurd	
Councillor M McDonald	
Councillor R Rybarczyk	
Councillor R Shanhun	

Staff

Mr B Bailey	(Chief Executive Officer)
Mr L Fouché	(Executive Manager Development Services)
Mr B Pepper	(Executive Manager Infrastructure)
Mrs N Winsloe	(Executive Secretary)

Apologies

Councillor W Gibson
Councillor J Clarke

Approved Leave of Absence

3 PUBLIC QUESTION TIME

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Mark Knowles

1. Given that the officers are now recommending a significant change to the proposed purpose of the lease, suggesting the addition of a 'bar and restaurant use' that substantially changes the use of the site, will the lease be re-advertised inviting new submissions to be received?

Answer by the Chief Executive Officer

This will be addressed by Council in their decision-making outcome today.

2. Other businesses that were not originally interested in leasing a County Club will no doubt have a much greater interest in the opportunity to operate a 'bar and restaurant'. Does it appear improper to advertise an EOI for one purpose and award it for another purpose?

Answer by Chief Executive Officer

The Cervantes Country Club has been operating with a bar and commercial kitchen / restaurant for an extended period to date and holds a Tavern liquor license. The terms bar and restaurant have been included in the lease uses to provide clear definition, but are considered aligned to the content provided in the Expression of Interest documentation and public advertising.

3. Given the officers are recommending a significant change in the proposed purpose of the lease will the "intent to dispose" advertising process be undertaken again to ensure the community is aware of this significant change?

Answer by the Chief Executive Officer

As detailed in the previous response, the proposed purpose is considered aligned to the content provided in the Expression of Interest documentation and public advertising.

Megan Knowles

1. Given the officers are recommending a significant change in the proposed purpose of the lease will the rental be re-assessed to reflect what is a very significant change in the use of the site?

Answer by the Chief Executive Officer

As detailed in the previous response, the proposed purpose of the lease is considered aligned to the content provided in the Expression of Interest documentation, public advertising and the valuation methodology undertaken.

2. Why have the names of all the submissions received been placed in the body of the report and not kept confidential? I am aware of a number of submissions sent in but do not appear on this list, why? One of the objections raised is from the Member of Moore, Shane Love. Where is that objection?

Answer by the Chief Executive Officer

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The Local Government Act 1995 and the Shire of Dandaragan Local Government (Council Meetings) Local Law 2019 details a range of scenarios when an agenda item, or relevant attachments may be withheld from the public as confidential. The submissions and information which has been included in the public agenda was not considered as being eligible for being marked as confidential. A search of the Shire's records system has not located a submission from the Member for Moore.

3. The officer's report states 'In-principal support for the lease has recently been received from the Department of Planning, Lands and Heritage and final approval will be addressed when the executed lease is lodged with the Minister's office'. Why would the CEO put this report to Council and not seek interim consent from the Minister for Lands in the first instance and now for the significant change in purpose in the vesting order? The report also states that the report concern for the election cycle and possible deferment. Why are Council in the need of rushing the report through and changed lease purpose?

Response by the Chief Executive Officer

It is common practice for a draft proposed lease to be submitted to the Department of Planning, Lands and Heritage prior to execution. This avoids unnecessary duplication of administrative processes and incurring of additional legal costs.

The Shire of Dandaragan Council does not have a caretaker policy or other legislative impediments which prevents it from dealing with the lease decision. Given the matter is in the final stages of the Council decision making process, it is not unreasonable for the Council to choose to exercise its discretion to deal with the matter. The Chief Executive Officer has discussed the election cycle within the agenda report to maintain transparency and to inform Council of their capacity to defer the matter if they choose to do so.

Barbara Hayes – Cervantes Country Club Inc. President

1. Will you Councillors support the Cervantes Club, or compromise the Sporting Clubs in Cervantes and forego Repayment of our outstanding loan and substantial annual rent?
2. Is Freedom of Enterprise a principal that Councillors endorse?
3. Are the wishes of the vast majority of the Cervantes Community, the decisions, you have already made, the consent of the Minister for Lands, and the Liquor and Gaming Department, supported by Council today?

Each question was followed by a supporting statement.

The Shire President advised that the questions would be addressed by the meeting outcome.

4 PURPOSE OF THE MEETING

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The purpose of the meeting is for Council to consider public submissions associated with the proposed disposal (lease) of property being the Cervantes Country Club which was advertised for public submissions. Council will determine whether or not to lease the facility at this meeting.

5 ORDER OF BUSINESS

Cr R Rybarczyk and Cr R Shanhun declared an Impartiality Interest in Item 5.1.1 as members of the Cervantes Bowling Club.

5.1

5.1.1 CERVANTES COUNTRY CLUB FACILITY - INTENT TO DISPOSE BY WAY OF LEASE

Location:	Shire of Dandaragan
Applicant:	Not Applicable
Folder Path:	SODR-1739978813-306
Disclosure of Interest:	Nil
Date:	2 October 2023
Author:	Brent Bailey, Chief Executive Officer
Senior Officer:	Not Applicable

PROPOSAL

The purpose of this item is for Council to consider public submissions associated with the proposed disposal (lease) of property being the Cervantes Country Club which was advertised for public submissions. It is recommended that Council proceed with the lease, authorise the CEO to finalise lease negotiations and request the Minster for Lands to expand the current purpose of the reserve.

BACKGROUND

The Shire of Dandaragan is responding to a request from the Cervantes Country Club Inc. to appoint a new lessee / facility manager for the Cervantes Country Club premises. The Club Management Committee has determined that they are no longer the best entity to be running the business which has achieved marginal viability over recent years, they propose to surrender their lease if an appropriate entity is forthcoming.

The Cervantes Country Club was constructed by the community of Cervantes and opened in November 1974. The building has been renovated over the ensuing years to its current state which accommodates a range of amenities tailored to servicing the sporting and leisure customers of the surrounding facilities. The facility has been operating with a Tavern License since 2017 and is an integral part of the social fabric of the community of Cervantes.

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At a Special Council Meeting on 17 July 2023 Council endorsed an Expression of Interest from “The Club Cervantes Pty Ltd” as the highest and only submission. Council also authorised the CEO to negotiate a draft lease document with the preferred respondent for Council consideration and authorised the CEO to advertise the proposal in accordance with Section 3.58(3) of the Local Government Act 1995

COMMENT

Public advertising was carried out in accordance with the provisions of Section 3.58(3) of the Local Government Act 1995 with notices placed in local papers, the Midwest Times, the Shire’s website, noticeboards and social media pages. The closing date for submissions was 11 August 2023. At the time of writing this agenda report there were 52 submissions received which have been summarised in the table below. From a local community member perspective there appears to be broad support for the proposal, however the owners and relatives of the Cervantes Bar and Bistro have raised concerns in their objections about the impact that a change in business model at the Country Club may have on their own operation’s viability.

Respondent	Summary	Supported / Opposed to Proposal
A Krieger	Submission supports the proposal on the grounds of community benefit, favouring commercial enterprise operating the facility.	Supported
D Newing	Submission supports the proposal on the grounds of community benefit, favouring commercial enterprise operating the facility.	Supported
T Monk	Submission supports the proposal on the grounds of Community and visitor benefit.	Supported
J Jasha	Submission supports the proposal on the grounds of Community and visitor benefit.	Supported
M Scott	Submission supports the proposal on the grounds of community benefit, favouring commercial enterprise operating the facility.	Supported
S Whitlock	Submission supports the proposal on the grounds of community benefit, favouring commercial enterprise operating the facility.	Supported
K Brennan	Submission supports the proposal on the grounds of favouring commercial enterprise operating the facility.	Supported
S Koncurat	Submission supports the proposal on the grounds of community benefit, favouring commercial enterprise operating the facility.	Supported
T Khan	Submission supports the proposal on the grounds of community benefit, favouring commercial enterprise operating the facility.	Supported

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M Burns	Submission supports the proposal on the grounds of community benefit, favouring commercial enterprise operating the facility.	Supported
L Lecras	Submission supports the proposal on the grounds of favouring commercial enterprise operating the facility.	Supported
J Thompson	Submission supports the proposal on the grounds of community benefit, favouring commercial enterprise operating the facility.	Supported
A Hulford	Submission supports the proposal on the grounds of community benefit, favouring commercial enterprise operating the facility.	Supported
J Mancini	Submission supports the proposal on the grounds of community benefit, favouring commercial enterprise operating the facility.	Supported
K Minson	Submission supports the proposal on the grounds of: community benefit.	Supported
G Wilson	Submission supports the proposal on the grounds of community benefit, favouring commercial enterprise operating the facility.	Supported
I Rennie	Submission supports the proposal on the grounds of community benefit, favouring commercial enterprise operating the facility.	Supported
D Walker	Submission supports the proposal on the grounds of community benefit, favouring commercial enterprise operating the facility.	Supported
E Brown	Submission supports the proposal on the grounds of community benefit, favouring commercial enterprise operating the facility.	Supported
G Neal	Submission supports the proposal on the grounds of community benefit, favouring commercial enterprise operating the facility.	Supported
J Simmons	Submission supports the proposal on the grounds of community benefit, favours commercial enterprise operating the facility	Supported
R Gazeley	Submission supports the proposal on the grounds of community benefit, favouring commercial enterprise operating the facility.	Supported
R Khan	Submission supports the proposal on the grounds of community benefit.	Supported
S Nelson	Submission supports the proposal on the grounds of community benefit.	Supported
S Khan	Submission supports the proposal on the grounds of community benefit, favouring commercial enterprise operating the facility.	Supported
T Coen	Submission supports the proposal on the grounds of community benefit, favouring commercial enterprise	Supported

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H Brooks	operating the facility and relieving struggling volunteers. Submission supports the proposal on the grounds of community benefit, favouring commercial enterprise operating the facility.	Supported
A Alone	Submission supports the proposal on the grounds of community benefit, favouring commercial enterprise operating the facility.	Supported
D Mitchell	Submission supports the proposal on the grounds of favouring commercial enterprise operating the facility.	Supported
K Brooks	Submission supports the proposal on the grounds of community benefit, favouring commercial enterprise operating the facility.	Supported
R Dell	Submission supports the proposal on the grounds of community and visitor benefit, favouring commercial enterprise operating the facility.	Supported
C Gardener	Submission supports the proposal on the grounds of community benefit, favouring commercial enterprise operating the facility.	Supported
S Scott	Submission supports the proposal on the grounds of community benefit, favouring commercial enterprise operating the facility.	Supported
T. Giles & Family	Submission supports the proposal on the grounds of community benefit, favouring commercial enterprise operating the facility.	Supported
H Thompson	Submission supports the proposal on the grounds of community benefit, favouring commercial enterprise operating the facility.	Supported
L Thompson	Submission supports the proposal on the grounds of community benefit, favouring commercial enterprise operating the facility.	Supported
B Hayes	Submission supports the proposal on the grounds of community benefit, favouring commercial enterprise operating the facility.	Supported
B Jeffrey	Submission supports the proposal on the grounds of community benefit, favouring commercial enterprise operating the facility.	Supported
L Way	Submission supports the proposal on the grounds of community benefit, favouring commercial enterprise operating the facility.	Supported
C Thompson	Submission supports the proposal on the grounds of favouring commercial enterprise operating the facility.	Supported
C Rennie	Submission supports the proposal on the grounds of community benefit, favouring commercial enterprise operating the facility.	Supported

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Cervantes Bowling Club	Submission supports the proposal on the grounds of community benefit, favouring commercial enterprise operating the facility.	Supported
M Knowles	Submission objects to the proposal on the following grounds: <ul style="list-style-type: none"> • Commercial lease departs from the Country Club's intended use. • Community based model should be pursued further. • Potential inaccessibility of the facility to sporting clubs. • The proposed business model will have a detrimental impact on other businesses in town. 	Objects
M Scott	Submission supports the proposal on the grounds of community benefit, favouring commercial enterprise operating the facility.	Supported
Cervantes Tennis Club	Submission supports the proposal on the grounds of community benefit, favouring commercial enterprise operating the facility.	Supported
N Birch	Submission supports the proposal on the grounds of community benefit, favouring commercial enterprise operating the facility.	Supported
Cervantes Football Club	Submission supports the proposal on the grounds of: community benefit, favouring commercial enterprise operating the facility.	Supported
M Knowles (Molly)	<ul style="list-style-type: none"> • Submission objects to the proposal on the following grounds: Community based model should be pursued further • The proposed business model will have a detrimental impact on other businesses in town. 	Objects
Jurien Ice	Submission objects to the proposal on the following grounds: <ul style="list-style-type: none"> • The proposed business model will have a detrimental impact on other businesses in town. • Community based model should be pursued further. 	Objects
B Knowles	Submission objects to the proposal on the following grounds: <ul style="list-style-type: none"> • The proposed business model will have a detrimental impact on other businesses in town. • Community based model should be pursued further. 	Objects
M Knowles (Megan)	<ul style="list-style-type: none"> • Submission objects to the proposal on the following grounds: Commercial lease departs from the Country Club's intended use. • Community based model should be pursued further. • Potential inaccessibility of the facility to sporting clubs 	Objects

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R Knowles	<ul style="list-style-type: none"> • The proposed business model will have a detrimental impact on other businesses in town. <p>Submission objects to the proposal on the following grounds:</p> <ul style="list-style-type: none"> • The proposed business model will have detrimental impact on other businesses in town. • Community based model should be pursued further. 	Objects
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In accordance with Council’s instructions, a draft lease has been developed in consultation with the respondent, “The Club Cervantes Pty Ltd”. A number of minor amendments to the proposed commercial lease terms were requested by the respondent however the “proposed use” warrants further Council consideration and action. The original proposed use was for “Community and Sporting Club and uses ancillary thereto” which had alignment with the current use, theme of the facility and ongoing interface of the business with the local sporting clubs, particularly bowls and golf. This use was reviewed by Council’s solicitors and it is recommended that this be amended to Community and Sporting Club, Bar, Restaurant which is a more descriptive fit of the proposal.

The current Vesting / Management Order specifies the purpose of the use of the reserve as “Club and Club Premises’. It is recommended that the CEO be authorised to seek an expansion of the prescribed uses to include Bar / Restaurant with the Minister for Lands (if required by the Minister). In-principal support for the lease has recently been received from the Department of Planning, Lands and Heritage and final approval will be addressed when the executed lease is lodged with the Minister’s office.

As the nature of the new proposed use differs from the current predominantly ‘club’ use, the proponents will be required to submit a development application, seeking approval to also permit a ‘tavern’ use in terms of Local Planning Scheme No.7.

In making its determination on this matter, if Council does not want to proceed with leasing the Cervantes Country Club to the proposed lessee, the following alternate motion is supplied:

That Council:

1. *After considering public submissions in accordance with Section 3.58(3) of the Local Government Act 1995, advises the “The Club Cervantes Pty Ltd” that it is not proceeding with the disposal of land via lease on the material terms presented by the respondent.*
2. *Request the CEO to consult with the Cervantes Country Club Inc. to determine alternative options for the entity’s sustainability and ongoing operations of the clubhouse facility.*

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In addition, it is acknowledged that consideration of this lease proposal is being undertaken during a Council election cycle where it is expected that there will be a significant change to Council's composition following the October elections. While the Shire of Dandaragan does not have a caretaker policy, and all past stages of this matter have been undertaken under the current Council, should Council prefer to allow the new Council to resolve the matter, the following alternate motion is supplied:

That Council defer consideration of public submissions and determination of the lease proposal until after the October 2023 Council elections are completed.

The Officer's Recommendation 2 and 3 have been included to facilitate the annual allocation of lease fees towards community infrastructure projects in Cervantes. A reserve was created with this purpose following the sale of Council's industrial lot on 11 Gazeley Way. A slight amendment to the reserve's purpose is proposed to remove this specific reference and outline the expenditure purpose better as follows:

"to be used for the construction, renewal, major maintenance and improvements to community infrastructure assets in the town of Cervantes".

CONSULTATION

Public consultation is as detailed within this agenda item.

STATUTORY ENVIRONMENT

Local Government Act 1995 S3.58 – Disposing of Property
Local Government Act 1995 S6.11 – Reserve Accounts

3.58. Disposing of property

(1) In this section —

dispose *includes to sell, lease, or otherwise dispose of, whether absolutely or not;*

property *includes the whole or any part of the interest of a local government in property, but does not include money.*

(2) Except as stated in this section, a local government can only dispose of property to —

(a) the highest bidder at public auction; or

(b) the person who at public tender called by the local government makes what is, in the opinion of the local government, the most acceptable tender, whether or not it is the highest tender.

(3) A local government can dispose of property other than under subsection (2) if, before agreeing to dispose of the property —

(a) it gives local public notice of the proposed disposition —

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- (i) *describing the property concerned; and*
 - (ii) *giving details of the proposed disposition; and*
 - (iii) *inviting submissions to be made to the local government before a date to be specified in the notice, being a date not less than 2 weeks after the notice is first given;*
 - and*
 - (b) *it considers any submissions made to it before the date specified in the notice and, if its decision is made by the council or a committee, the decision and the reasons for it are recorded in the minutes of the meeting at which the decision was made.*
- (4) *The details of a proposed disposition that are required by subsection (3)(a)(ii) include —*
- (a) *the names of all other parties concerned; and*
 - (b) *the consideration to be received by the local government for the disposition; and*
 - (c) *the market value of the disposition —*
 - (i) *as ascertained by a valuation carried out not more than 6 months before the proposed disposition; or*
 - (ii) *as declared by a resolution of the local government on the basis of a valuation carried out more than 6 months before the proposed disposition that the local government believes to be a true indication of the value at the time of the proposed disposition.*
- (5) *This section does not apply to —*
- (a) *a disposition of an interest in land under the Land Administration Act 1997 section 189 or 190; or*
 - (b) *a disposition of property in the course of carrying on a trading undertaking as defined in section 3.59; or*
 - (c) *anything that the local government provides to a particular person, for a fee or otherwise, in the performance of a function that it has under any written law; or*
 - (d) *any other disposition that is excluded by regulations from the application of this section.*

6.11. Reserve accounts

- (1) *Subject to subsection (5), where a local government wishes to set aside money for use for a purpose in a future financial year, it is to establish and maintain a reserve account for each such purpose.*
- (2) *Subject to subsection (3), before a local government —*
- (a) *changes* the purpose of a reserve account; or*
 - (b) *uses* the money in a reserve account for another purpose, it must give one month's local public notice of the proposed change of purpose or proposed use.*

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** Absolute majority required.*

POLICY IMPLICATIONS

There are no policy implications relevant to this item.

FINANCIAL IMPLICATIONS

The annual lease value nominated in the Expression of Interest is \$50,000 ex GST. A market valuation for the lease was obtained from an independent valuer which returned a range of \$30,000 - \$50,000 based on the current business fundamentals, property condition, economic conditions and market comparables. The mid-point of the valuation range was used for the assessed market valuation for advertising purposes.

STRATEGIC IMPLICATIONS

Strategic Community Plan – Envision 2029

01 - Infrastructure	The Shire will work cooperatively with private enterprise and government agencies to develop and maintain a dynamic infrastructure network responsive to usage demand that attracts and retains residents and businesses.
Priority Outcomes	Our Role
Our communities contain vibrant, activated public open space and buildings with high levels of utilisation and functionality.	To manage and facilitate community assets that are flexible, vibrant adaptable and enjoyable places to occupy employing the principals of placemaking and design thinking.
Our investments in public assets are based on responsible and sustainable asset custodianship	Increase activation of our public open space and buildings rather than increasing quantity without a demonstrated need.

ATTACHMENTS

Circulated with the agenda is the following item relevant to this report:

- Public submissions in support (Doc id: SODR-129784381-1000)
- Public submissions in objection (Doc id: SODR-129784381-1001)
- Draft Lease (Confidential)
(Marked 9.4.1)

VOTING REQUIREMENT

Simple Majority

Absolute Majority – Officer Recommendation 3

OFFICER RECOMMENDATION / COUNCIL DECISION 1

Moved Cr Scharf, seconded Cr Rybarczyk

That Council:

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1. After considering public submissions in accordance with Section 3.58(3) of the Local Government Act 1995, authorise the disposal of property and approve the proposed lease to “The Club Cervantes Pty Ltd” inclusive of the following material terms:
 - a. Land / Premises: The Cervantes Country Club located on Reserve 32133, 14 Aragon Street, Cervantes.
 - b. Initial Term: 5 Years.
 - c. Further Term Options: 3 further terms of 5 Years.
 - d. Rent: \$50,000 p.a. excluding GST.
 - e. Rent Review: CPI with Market Rent Review every 3 years.
 - f. Proposed Business Use: Community and Sporting Club, Bar, Restaurant and uses ancillary thereto.
2. Authorise the Chief Executive Officer to finalise lease negotiations which will include determining the commencement date of the lease and executing the deed of surrender with the Cervantes Country Club Inc.
3. Authorise the Chief Executive Officer to submit the lease to the Minister for Lands for final approval.
4. Authorise the Chief Executive Officer to request the Minister for Lands to approve the addition of Bar, Restaurant to the approved purposes of the reserve.

During debate Cr McDonald foreshadowed that she would move an Alternate Motion to defer consideration of public submissions and determination of the lease proposal until after the October 2023 Council Elections are completed, if the motion under debate was lost.

CARRIED 5 / 1

FOR: Cr Holmes, Cr Scharf, Cr Rybarczyk, Cr Glasfurd, Cr Shanhun

AGAINST: Cr McDonald

OFFICER RECOMMENDATION / COUNCIL DECISION 2
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Moved Cr Shanhun, seconded Cr Glasfurd

That Council:

1. Acknowledge that the Cervantes Country Club building and all associated amenities have been built and managed by the Cervantes community;
2. Endorses an annual budget provision for the allocation of the lease fees received from the lease of the Cervantes Country Club to the Cervantes Community Infrastructure Reserve.

CARRIED 6 / 0

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FOR: Cr Holmes, Cr Scharf, Cr Rybarczyk, Cr Glasfurd, Cr Shanhun, Cr McDonald

AGAINST: Nil

OFFICER RECOMMENDATION / COUNCIL DECISION 3

Moved Cr Shanhun, seconded Cr Rybarczyk

That Council:

- 1. Resolves to amend the purpose of the Cervantes Community Infrastructure Reserve to:**
 - a. “to be used for the construction, renewal, major maintenance and improvements to community infrastructure assets in the town of Cervantes”.**
- 2. Authorise the Chief Executive Officer to undertake the associated public notice requirements in accordance with Section 6.11(2) of the Local Government Act 1995.**

CARRIED BY ABSOLUTE MAJORITY 6 / 0

FOR: Cr Holmes, Cr Scharf, Cr Rybarczyk, Cr Glasfurd, Cr Shanhun, Cr McDonald

AGAINST: Nil

6 CLOSURE OF MEETING

The presiding member declared the meeting closed at 1.26pm.

These minutes were confirmed at a meeting on

Signed

Presiding person at the meeting at which the minutes were confirmed

Date